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09/712,584	11/14/2000	Daniel Arturo Delfin Farias	SJO919990173	9711
46917 7590 08/26/2009 KONRAD RAYNES & VICTOR, LLP. ATTN: IBM37 315 SOUTH BEVERLY DRIVE, SUITE 210 BEVERLY HILLS, CA 90212				
EXAMINER				
ADE, OGER GARCIA				
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1 UNITED STATES PATENT AND TRADEMARK OFFICE

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4 BEFORE THE BOARD OF PATENT APPEALS  
5 AND INTERFERENCES  
6

7  
8 *Ex parte* DANIEL ARTURO DELFIN FARIAS  
9 and RUBEN ALBERTO WARJO ROMO  
10

11  
12 Appeal 2009-000980  
13 Application 09/712,584  
14 Technology Center 3600  
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16  
17 Decided: August 24, 2009  
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20  
21 *Before* MURRIEL E. CRAWFORD, HUBERT C. LORIN, and  
22 BIBHU R. MOHANTY, *Administrative Patent Judges*.  
23  
24 CRAWFORD, *Administrative Patent Judge*.  
25

26  
27 DECISION ON APPEAL

28  
29 STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 (2002) from a final rejection of claims 1-69. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

Appellants invented a replenishment management system, method, and program which provides just in time delivery to an acquiring entity, which may comprise a distribution center, wholesaler or any other supply chain system of components or products (Spec. 1:7-11).

Claim 1 under appeal is further illustrative of the claimed invention as follows:

1. A method for ordering products wherein the products are supplied by a supplier to a replenishment service center (RSC), wherein an acquiring entity obtains products from the RSC by performing a sequence of operation comprising:

(i) generating, by the acquiring entity, a request for a quantity of products;

(ii) performing computer related operations to update a computerized inventory database with a product record including a requested quantity that the acquiring entity wants to receive of the product based on the generated order;

(iii) performing computer related operations, by the acquiring entity, to process a request from the supplier for information on the requested quantity from the product record in the inventory database and transmitting the requested information to the supplier in response to the request;

(iv) performing computer related operations to process information from the supplier indicating a commitment quantity of a number of the products the supplier intends to ship to the RSC to meet the requested quantity, wherein the supplier uses the requested information to determine the commitment quantity to indicate;

(v) performing computer related operations to update the inventory database with the information received from the supplier to indicate the commitment quantity;

(vi) performing computer related operations to update the inventory database from information received from the RSC indicating products shipped from the supplier for one specified product record to satisfy the commitment quantity; and  
(vii) transmitting, by the acquiring entity, a pull order to the RSC to ship products to the acquiring entity that the supplier shipped to the RSC to satisfy the commitment quantity.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Johnson	US 5,712,989	Jan. 27, 1998
Graves	US H1743	Aug. 4, 1998
Pages 1-2 and 6-8 of the Specification (hereinafter "Admitted Prior Art").		

The Examiner rejected claims 1-38, 58-67, and 69 under 35 U.S.C. § 103(a) as being unpatentable over the Admitted Prior Art in view of Johnson; and rejected claims 39-57 and 68 under 35 U.S.C. § 103(a) as being unpatentable over the Admitted Prior Art in view of Johnson and Graves.

We REVERSE.

## ISSUES

Did the Appellants show the Examiner erred in rejecting the subject matter of claims 1-69 as being unpatentable over a combination of the Admitted Prior Art, Johnson, and Graves, because the Examiner did not establish a proper case of prima facie obviousness?

## FINDINGS OF FACT

*Specification*

1 Appellants invented a replenishment management system, method,  
2 and program which provides just in time delivery to an acquiring entity,  
3 which may comprise a distribution center, wholesaler or any other supply  
4 chain system of components or products (Spec. 1:7-11).

5  
6 PRINCIPLES OF LAW

7 *Obviousness*

8 Section 103 forbids issuance of a patent when “the differences  
9 between the subject matter sought to be patented and the prior art are such  
10 that the subject matter as a whole would have been obvious at the time the  
11 invention was made to a person having ordinary skill in the art to which said  
12 subject matter pertains.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406  
13 (2007). The question of obviousness is resolved on the basis of underlying  
14 factual determinations including (1) the scope and content of the prior art,  
15 (2) any differences between the claimed subject matter and the prior art, and  
16 (3) the level of skill in the art. *Graham v. John Deere Co.*, 383 U.S. 1, 17-  
17 18 (1966). *See also KSR*, 550 U.S. at 407 (“While the sequence of these  
18 questions might be reordered in any particular case, the [*Graham*] factors  
19 continue to define the inquiry that controls.”)

20 Rejections on obviousness grounds cannot be sustained by mere  
21 conclusory statements. Instead, there must be some articulated reasoning  
22 with some rational underpinning to support the legal conclusion of  
23 obviousness. *Id.* at 418 (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir.  
24 2006).

25 The agency tribunal must present a full and reasoned explanation of  
26 its decision. The agency tribunal must set forth its findings and the grounds

thereof, as supported by the agency record, and explain its application of the law to the found facts. *In re Lee*, 277 F.3d 1338, 1342 (Fed. Cir. 2002).

#### ANALYSIS

We are persuaded of error on the part of the Examiner by Appellants' argument that the Examiner did not establish a proper case of prima facie obviousness in rejecting claims 1-69 (App. Br. 21-40, Reply Br. 3-5). The entire factual basis for the Examiner's rejection of the subject matter of claims 1-69 is set forth on two pages (Ex. Ans. 4-5)<sup>1</sup>. We agree with the Examiner that the Description of the Related Art on pages 1-2 of the Specification, and the description of ERP program 50 on pages 6-8 of the Specification constitute admissions of prior art. However, the Examiner has failed to set forth findings of fact detailing which portions of the Admitted Prior Art correspond to the specific limitations of claims 1-69. By failing to set forth such findings, this rejection does not satisfy the "scope and content of the prior art" prong of the *Graham* analysis. Specifically, other than identifying which pages of the Specification contain admitted prior art, the Examiner has not set forth the scope and content of what technical details, even generally, are contained in the prior art, and how they are applicable to the claimed subject matter. Thus a proper case of prima facie obviousness has not been established.

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<sup>1</sup>These rejections are copied almost verbatim from pages 2-4 of the final Office Action mailed October 4, 2007; pages 2-4 of the final Office Action mailed April 21, 2005; and pages 3-4 of the non-final Office Action mailed June 28, 2004.

1           Indeed, the entirety of the findings as to the scope and the content of  
2     the Admitted Prior Art, as set forth by the Examiner, is a general allegation  
3     that the Admitted Prior Art discloses everything that has not been set forth as  
4     being disclosed by Johnson or Graves, without any specific findings as to  
5     what the Admitted Prior Art actually discloses. Such “findings” are an  
6     impermissible conclusory statement that falls well short of the standard that  
7     requires that the rejection provide some articulated reasoning with some  
8     rational underpinning to support the legal conclusion of obviousness, and be  
9     full and reasoned. *See KSR*, 550 U.S. at 418; *In re Lee*, 277 F.3d at 1342-43.  
10    Such articulated reasoning is necessary so that Appellants can clearly  
11    understand and traverse specific alleged errors in the Examiner’s findings.  
12    Without such guidance, the Appellants are left to guess at which portions of  
13    the Admitted Prior Art correspond to which portions of claims 1-69, and  
14    then respond to their own interpretation of what the Examiner meant. This  
15    is especially true where Appellants have set forth in their Appeal Brief a  
16    plethora of specific limitations in the claims that are allegedly not disclosed  
17    by the prior art.

18           Regardless of whether the Admitted Prior Art actually discloses any  
19    of these specific limitations, the Examiner has not properly responded to  
20    these specific assertions, instead citing pages of case law without applying  
21    them to specific factual situations. Accordingly, in balancing Appellants’  
22    specific arguments that the Examiner has not shown how the Admitted Prior  
23    Art discloses specific limitations, and the Examiner’s general allegations  
24    that the Admitted Prior Art does disclose the specific limitations, we are  
25    constrained to agree with the Appellants because the Examiner has failed to

1 provide a showing as to how specific disclosures of the Admitted Prior Art  
2 even generally correspond to specific limitations of claims 1-69.

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4 CONCLUSION OF LAW

5 On the record before us, Appellants have shown that the Examiner  
6 erred in finding obvious the subject matter of claims 1-69.

7  
8 REVERSED

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